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09/677,495	10/04/2000	Gregory Lorne Pollon	LAMA116222	5548

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER

GRAHAM, MARK S

ART UNIT PAPER NUMBER

3711

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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 9

Application Number: 09/677,495
Filing Date: October 04, 2000
Appellant(s): POLLON ET AL.

Kevan L. Morgan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/13/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 9 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,876,291	DuBose	3-1999
6,003,583	Lacoste et al.	12-1999
5,505,244	Thumann	4-1996

5,419,549	Galloway et al.	5-1995
5,549,302	Lapsker et al.	8-1996

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 4, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubose in view of Lacoste .

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dubose in view of Thumann.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Galloway

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Lapsker.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubose in view of Thumann and Galloway.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 9 above, and further in view of Lapsker. This rejection is set forth in prior Office Action, Paper No. 4.

(11) Response to Argument

Appellant's arguments are that the examiner's conclusion of obviousness is based upon improper hindsight reasoning and that the secondary references, Lacoste and Thumann are nonanalogous art.

In response, the examiner first notes that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Turning to the true substance of appellant's argument, that Lacoste and Thumann are nonanalogous art and that there is no motivation to combine them with Dubose, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Dubose discloses a screen which is to be disposed across a garage door opening for practicing sports. Dubose at Col. 1, lines 35 and 36 and lines 47-49 indicates that when not in use the device is to be coiled or rolled and stored. While Dubose does not provide details of the storage, this intent to roll or coil the device for storage purposes would prompt the ordinarily skilled artisan to consider relevant art dealing with this problem. Obviously other devices used to screen open doorways or garage doorways which are rolled or coiled in storage would be reasonably pertinent to the storage problem and would have been considered by the ordinarily skilled artisan

having knowledge of Dubose's disclosure. After considering such art the efficient solution presented by Lacoste or Thumann for storing rolled/coiled door opening screens would have been clearly obvious to the ordinarily skilled artisan, and would have been applied to effect the rolled or coiled storage envisioned by Dubose.

Regarding appellant's next argument, the appellant apparently continues to misunderstand the rejection. The examiner has not asserted that Lacoste or Thumann's screens be designed to stop a ball or discussed latch mechanisms. Dubose teaches this feature. Lacoste and Thumann have been cited to teach that such door opening coverings may be retractably stored in containers for convenience. Regarding the "latches" the appellant has not even claimed such a feature. Moreover, the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. *In re Bozek* 163 USPQ 545. The ordinarily skilled artisan is not presumed to work in a vacuum and obviously would have used whatever "latches" were deemed appropriate.

Concerning appellant's next argument regarding "door opening coverings" the reasons/motivation for the combination of references has been discussed above.

With regard to appellant's argument over Dubose's curved ground contacting portion Dubose makes clear that this is only a preferable feature not a necessary one. Contrary to appellant's assertion, support for this position may be found at Col. 5, line 26. Moreover, the removal of such a feature with its corresponding loss of function would have been obvious to one of ordinary skill in the art.

In conclusion the use of retractable housings for screens is commonly known and the fact that a screen in the sports target art does not specifically disclose the use of such is not dispositive on what would have been obvious to one of ordinary skill in the art. It is the examiner's position that one of ordinary skill in the relevant art considering Dubose's disclosure would have been well aware of retractable screen housings and have found them obvious for sport target screens.

For the above reasons, it is believed that the rejections should be sustained.

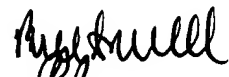

Respectfully submitted,

Mark S. Graham
Primary Examiner
Art Unit 3711



MSG
January 17, 2003

Conferees

Paul Sewell 
Steve Blau 

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347